

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Number 96-1285 (RCL)
)	
GALE A. NORTON, Secretary of the Interior, <u>et al.</u>,)	
)	
)	
Defendants.)	
)	

PRETRIAL ORDER

In its September 17, 2002 memorandum opinion, this Court stated that it would schedule further proceedings in this litigation “to ensure that the defendants properly discharge their fiduciary obligations.” Cobell v. Norton, 226 F.Supp.2d 1, 135 (D.D.C. 2002). The Court also explained that it had

fashioned much of the relief granted today (such as future proceedings and the appointment of a special master) simply because of the current status of trust reform. That is, irrespective of whether the defendants perpetrated a fraud on the plaintiffs and this Court, there is no doubt that they have failed to bring themselves promptly into compliance with the fiduciary duties declared by the Court in December of 1999 and listed in the 1994 Act. As such, the Court has no choice but to modify the future proceedings in this case and to appoint another special master to monitor the status of trust reform and the defendants’ efforts to bring themselves into compliance with the trust obligations declared by the Court and enumerated in the 1994 Act.

Id. Therefore, although that opinion is presently on appeal to the D.C. Circuit, the further proceedings ordered that date (which proceedings have been designated the “Phase 1.5 trial”) shall proceed as scheduled, because they are “not dependent on the Court’s conclusion that the defendants committed

several frauds on the Court” or on the Court’s civil contempt findings. Id.

On April 29, 2003, the Court held a pretrial conference for the Phase 1.5 trial. Having considered the arguments presented by the parties during that conference, the Court hereby enters the following orders:

1. It is hereby ORDERED that the Phase 1.5 trial, which is scheduled to commence on 10:00 a.m. on Thursday, May 1, 2003, shall be conducted in accordance with the pretrial statements that have been submitted by the parties. Any witnesses and exhibits that were neither identified in these pretrial statements nor identified during the April 29 hearing shall not be received, absent prior express leave from the Court.
2. During the April 29 hearing, the Court orally denied defendants’ motion in limine as to plaintiffs’ proffered expert “rebuttal” testimony and opinions. The Court also heard oral arguments on defendants’ motion in limine to exclude plaintiffs’ January 6 Plan and all evidence offered by plaintiffs in support of their Plan. The Court will deny that motion. Contrary to defendants’ arguments, Plaintiffs’ January 6 Plan is not a model for calculating damages, but a model for conducting an historical accounting of the individual Indian money (IIM) trust that seeks to shift the burden to defendants to determine a method for distributing the undisbursed funds in the trust to each IIM beneficiary. Accordingly, it is hereby ORDERED that defendants’ motion in limine to exclude plaintiffs’ plan for determining accurate balances in the Individual Indian Trust and all evidence offered in support [1998-1] be, and hereby is, DENIED.
3. All other motions in limine submitted by defendants will be ruled upon as the need arises

during the Phase 1.5 trial.

4. In light of the Court's determination during the April 29 hearing to exclude the testimony of Joe C. Christie from the Phase 1.5 trial, except as a potential authentication witness, it is hereby ORDERED that plaintiffs' motion for a protective order relating to Christie's scheduled deposition [1946-1] be, and hereby is, DENIED as moot. It is further ORDERED that defendants' motion to compel discovery from Christie and request for expedited consideration [1985-1] be, and hereby is, DENIED as moot. It is further ORDERED that defendants' motion to disqualify Christie as an expert witness and to disqualify Dennis Gingold as Christie's counsel be, and hereby is, DENIED as moot.

SO ORDERED.

Date: _____

Royce C. Lamberth
United States District Judge